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MITIGATED NEGATIVE DECLARATION

May 26, 2011

Project Name: NRG Borrego Solar One
Project Number(s): 3300-10-026 (MUP)
Environmental Review Number: 3910-10-050-001

**This Document is Considered Draft Until it is Adopted by the Appropriate
County of San Diego Decision-Making Body.**

This Mitigated Negative Declaration is comprised of this form along with the Environmental Initial Study that includes the following:

- a. Environmental Analysis Form
- b. Extended Initial Studies (See References in Initial Study)
- c. Ordinance Compliance Checklist

I. California Environmental Quality Act Mitigated Negative Declaration Findings:

Find, that this Mitigated Negative Declaration reflects the decision-making body's independent judgment and analysis, and; that the decision-making body has reviewed and considered the information contained in this Mitigated Negative Declaration and the comments received during the public review period; and that revisions in the project plans or proposals made by or agreed to by the project applicant would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur; and, on the basis of the whole record before the decision-making body (including this Mitigated Negative Declaration) that there is no substantial evidence that the project as revised will have a significant effect on the environment.

II. The Following Required Mitigation Measures are subject to only 3300-10-026 (MUP): Refer to the attached Environmental Initial Study for the rationale for requiring the following measures:

ANY PERMIT: (Prior to the approval of any plan, issuance of any permit, and prior to occupancy or use of the premises in reliance of this permit).

1. ARTIFACT CURATION: [DPLU, PCC] [BP, GP, CP, UO] [DPLU, FEE]

Intent: In order to ensure that the diagnostic cultural resource artifacts that were discovered during the surveys are curated for future research and study, the artifacts shall be delivered and accepted by a County approved curation facility.

Description of Requirement: All diagnostic archaeological materials recovered by Patricia Mitchell with KP Environmental during the work reported in: “*Cultural Resources Survey and Inventory Report for the Proposed Borrego 1 Solar Project, Borrego Springs, San Diego County, California Borrego Springs, San Diego County, California, Permit Number 3300 10-026 (MUP); Kiva Number 05-0061012; Log Number 10-05-001,*” prepared by Patricia Mitchell of KP Environmental, LLC, dated May 2011, have been curated at a San Diego facility that meets federal standards per 36 CFR Part 79, and therefore would be professionally curated and made available to other archaeologists/researchers for further study. The collections and associated records shall be transferred, including title, to an appropriate curation facility within San Diego County, to be accompanied by payment of the fees necessary for permanent curation. **Documentation:** The applicant shall provide a letter from the curation facility, which identifies that the archaeological materials referenced in the final report have been received and that all fees have been paid. **Timing:** Prior to approval of any plan or issuance of any permit, and prior to use of the premises in reliance of this permit, the artifacts shall be curated. **Monitoring:** The [DPLU, PCC] shall review the letter from the curation facility for compliance with this condition.

2. HISTORIC ARCHAEOLOGICAL RESOURCE EVALUATION: [DPLU, PCC] [GP, IP, UO, BP] [DPLU, FEEX4]

Intent: In order to mitigate for potential impacts to significant cultural resources pursuant to Section 15064.5 of the California Environmental Quality Act (CEQA), which are not determined to be significant pursuant to Section 86.602.o of the Resource Protection Ordinance (RPO), a historic resource evaluation of archaeological site CA-SDI-20016 shall be implemented. **Description of Requirement:** Implement the research design detailed in the archaeological extended study “*Cultural Resources Survey and Inventory Report for the Proposed Borrego 1 Solar Project, Borrego Springs, San Diego County, California Borrego Springs, San Diego County, California, Permit Number 3300 10-026 (MUP); Kiva Number 05-0061012; Log Number 10-05-001,*” prepared by Patricia Mitchell of KP Environmental, LLC, dated May 2011. The implementation of the research design constitutes mitigation for the proposed destruction of archaeological site CA-SDI-20016. The historic archaeological resource evaluation shall include the following:

- a. Intensive mapping: Use of a GPS, aerial photography, and GIS technologies to create detailed plan maps of site CA-SDI-20016 that would document key site elements.

- b. Archival Research, Oral History, and Historic Context Development: Conduct additional archival research to gather information in the history and context of site CA-SDI-20016 and its relationship with the development of the Borrego Valley community. This would be done in order to provide supporting data for DPR forms and NRHP and CRHR nomination forms. Sources might include the San Diego Historical Society, Borrego Springs Chamber of Commerce archives, and the National Archives in Laguna Niguel CA. This measure would also include oral interviews with surviving Di Giorgio family members if possible.
- c. Public Interpretative Document: This measure would include a publication for the general public that would add to the public's knowledge, understanding, and appreciation of Borrego Farms. The publication could consist of a brochure, pamphlet, or video to be made available to the public, County of San Diego, the Borrego Springs Chamber of Commerce, and state and local libraries.
- d. Archaeological Investigation: As stated above, all standing structures on the 308-acre parcel have been destroyed, and the Borrego Farms is recommended eligible for the NRHP under Criteria A for the CRHR under Criteria 1. There are scattering of artifacts on the surface and piles of debris across the B1S Project site; however there is little in the way of diagnostic artifacts that would contribute to the study and analysis of the site plan and function of this area of Borrego Farms. The mapped survey data from this study contributes much more and would be incorporated into the overall documentation of Borrego Farms.

Documentation: Upon completion, the applicant shall submit the historic archaeological evaluation report to the [DPLU, PCC] for review and approval.

Timing: Prior to the approval of any plan, issuance of any permit and prior to use of the premises in reliance of this permit, the historic archaeological evaluation report shall be completed. **Monitoring:** The [DPLU, PCC] shall review the report from the project archaeologist (PI) for compliance with this condition.

3. GROUNDWATER EASEMENT: [DPLU, PCC] [DGS, RP] [UO] [MITIGATION].

Intent: In order to mitigate **7.4 acre feet** direct impacts to groundwater and protect long term groundwater resources in the Borrego Valley aquifer, as evaluated in the [County Groundwater Resource Guidelines for Determining Significance](#) and to comply with the [DPLU Policy Regarding CEQA Cumulative Impact Analyses for Borrego Valley Groundwater Use](#), a Groundwater Protection Easement shall be granted. **Description of Requirement:** Grant to the County of San Diego a Groundwater Protection Easement as follows:

- a. The purpose of the easement is to protect Groundwater Resources in the Borrego Valley aquifer.
- b. The easement shall be granted on an off-site parcel of land that has been continuously used for irrigated agriculture or golf course purposes for at least the past five years and is being irrigated with at least **7.4 acre-feet** of water produced annually from the Borrego Valley aquifer.
- c. The easement shall permanently prohibit the use, extraction, storage, distribution or diversion of water from the Borrego Valley aquifer on the land subject to the easement.
- d. The terms of the easement and evidence of historic groundwater use will be to the satisfaction of the Director of Planning and Land Use (DPLU).

An alternative legally enforceable mechanism may be proposed for permanently stopping the withdrawal of at least **7.4 acre-feet** of water annually from the Borrego Valley aquifer. The alternative mechanism must be to the satisfaction of the Director of DPLU.

Documentation: The applicant shall prepare the draft plats and legal description of the easement, submit them to *[DGS, Real Property Division]*, and pay all applicable fees associated with preparation of the documents. The applicant shall also provide *[DGS, Real Property Division]* with evidence of historic groundwater use, for review and approval by *[DPLU, PCC]*. Upon recordation of the easement, the applicant shall provide copies of the recorded easement documents to *[DPLU, PCC]* for final approval. **Timing:** Prior to approval of any plan or issuance of any permit, and prior to use of the premises in reliance of this permit, the easement shall be recorded. **Monitoring:** The *[DGS, RP]* shall prepare the easement documents and send them to *[DPLU, PCC]* for pre-approval. The *[DPLU, PCC]* shall preapprove the documents, location of the easement, and the historic water usage information before the documents are released to the applicant for signature and subsequent recordation. Upon recordation of the easements *[DGS, Real Property Division]*, shall forward a copy of the recorded documents to *[DPLU, PCC]* for satisfaction of the condition.

GRADING PERMIT: *(Prior to approval of any grading and or improvement plans and issuance of any Grading or Construction Permits).*

4. **OFF-SITE MITIGATION: [DPLU, PCC] [BP, GP, CP, UO] [DPR, GPM] [DPLU, FEE X2] [MITIGATION] Intent:** In order to mitigate for the impacts to 2.2 acres of Desert Saltbush scrub (mitigated at a 2:1 ratio), which is a sensitive biological resource pursuant to CEQA and County Guidelines, off-site mitigation shall be acquired. **Description of Requirement:** The applicant shall purchase habitat credit, or provide for the conservation of habitat as detailed below in the

amount of **4.4 acres** of Desert saltbush scrub, located in the Borrego Valley ecological region:

- a. **Option 1:** If purchasing Mitigation Credit the mitigation bank shall be approved by the California Department of Fish & Game. The following evidence of purchase shall include the following information to be provided by the mitigation bank:
 1. A copy of the purchase contract referencing the project name and numbers for which the habitat credits were purchased.
 2. If not stated explicitly in the purchase contract, a separate letter must be provided identifying the entity responsible for the long-term management and monitoring of the preserved land.
 3. To ensure the land will be protected in perpetuity, evidence must be provided that a dedicated conservation easement or similar land constraint has been placed over the mitigation land.
 4. An accounting of the status of the mitigation bank. This shall include the total amount of credits available at the bank, the amount required by this project and the amount remaining after utilization by this project.
- b. **Option 2:** If habitat credit cannot be purchased in a mitigation bank, then the applicant shall provide for the conservation habitat of the same amount and type of land located in San Diego County as indicated below:
 1. Prior to purchasing the land for the proposed mitigation, the location should be pre-approved by [DPLU].
 2. A Resource Management Plan (RMP) shall be prepared and approved pursuant to the County of San Diego Biological Report Format and Content Requirements to the satisfaction of the Director of DPLU. If the offsite-mitigation is proposed to be managed by DPR, the RMP shall also be prepared and approved to the satisfaction of the Director of DPR.
 3. An open space easement over the land shall be dedicated to the County of San Diego or like agency to the satisfaction of the Director of DPLU. The land shall be protected in perpetuity.
 4. The purchase and dedication of the land and the selection of the Resource Manager and establishment of an endowment to ensure funding of annual ongoing basic stewardship costs shall be complete prior to the approval of the RMP.
 5. In lieu of providing a private habitat manager, the applicant may contract with a federal, state or local government agency with the primary mission of resource management to take fee title and

manage the mitigation land). Evidence of satisfaction must include a copy of the contract with the agency, and a written statement from the agency that (1) the land contains the specified acreage and the specified habitat, or like functioning habitat, and (2) the land will be managed by the agency for conservation of natural resources in perpetuity.

- c. **Option 3:** If habitat credit cannot be purchased in a mitigation bank, then the applicant can purchase land inholdings of 4.4 acres of Desert saltbush scrub, habitat or like functioning habitat within the Anza Borrego State Park, or a parcel of like functioning habitat approved prior to purchase by the Director of Department of Planning and Land Use. If a inholding is purchased, the lands will either (1) Be transferred to a government agency charged with conservation of natural resources via fee title (with demonstration of long term management capabilities), or (2) Dedicated in a conservation open space easement to the County and the land will be managed through an approved Resource Management Plan to the satisfaction of the Director of Planning and Land Use.

Documentation: The applicant shall purchase the off-site mitigation credits and provide the evidence to the [DPLU, PCC] for review and approval. If the offsite mitigation is proposed to be owned or managed by DPR, the applicant must provide evidence to the [DPLU PCC] that [DPR, GPM] agrees to this proposal. It is recommended that the applicant submit the mitigation proposal to the [DPLU, PCC], for a pre-approval. If an RMP is going to be submitted in-lieu of purchasing credits, then the RMP shall be prepared and an application for the RMP shall be submitted to the [DPLU, ZONING]. **Timing:** Prior to the approval of any grading or improvement plan or issuance of any grading or improvement permit, and prior to use of the premises in reliance of this permit, the mitigation shall occur. **Monitoring:** The [DPLU, PCC] shall review the mitigation purchase for compliance with this condition. Upon request from the applicant [DPLU, PCC] can pre-approve the location and type of mitigation only. The credits shall be purchased before the requirement can be completed. If the applicant chooses option #2, then the [DPLU, ZONING] shall accept an application for an RMP, and [DPLU, REG] [DPR, GPM] shall review the RMP submittal for compliance with this condition and the RMP Guidelines.

5. **OFF-SITE MITIGATION: [DPLU, PCC] [BP, GP, CP, UO] [DPLU,FEE X2] [MITIGATION] Intent:** In order to mitigate for the impacts to **2.6 acres** of Sonoran Creosote Bush Scrub and **1.6 acres** of Sonoran Mixed Woody Scrub (both mitigated at a ratio of 1:1), which is a sensitive biological resource pursuant to CEQA and the Resource Protection Ordinance (RPO), off-site mitigation shall be acquired. **Description of Requirement:** The applicant shall purchase habitat credit, or provide for the conservation of habitat as detailed below in the amount of **4.2 acres** of Sonoran creosote bush scrub or Sonoran mixed woody scrub located in the Borrego Valley ecological region:

- a. **Option 1:** If purchasing Mitigation Credit the mitigation bank shall be approved by the California Department of Fish & Game. The following evidence of purchase shall include the following information to be provided by the mitigation bank:
 1. A copy of the purchase contract referencing the project name and numbers for which the habitat credits were purchased.
 2. If not stated explicitly in the purchase contract, a separate letter must be provided identifying the entity responsible for the long-term management and monitoring of the preserved land.
 3. To ensure the land will be protected in perpetuity, evidence must be provided that a dedicated conservation easement or similar land constraint has been placed over the mitigation land.
 4. An accounting of the status of the mitigation bank. This shall include the total amount of credits available at the bank, the amount required by this project and the amount remaining after utilization by this project.
- b. **Option 2:** If habitat credit cannot be purchased in a mitigation bank, then the applicant shall provide for the conservation habitat of the same amount and type of land located in San Diego County as indicated below:
 1. Prior to purchasing the land for the proposed mitigation, the location should be pre-approved by [DPLU].
 2. A Resource Management Plan (RMP) shall be prepared and approved pursuant to the County of San Diego Biological Report Format and Content Requirements to the satisfaction of the Director of DPLU. If the offsite-mitigation is proposed to be managed by DPR, the RMP shall also be prepared and approved to the satisfaction of the Director of DPR.
 3. An open space easement over the land shall be dedicated to the County of San Diego or like agency to the satisfaction of the Director of DPLU. The land shall be protected in perpetuity.
 4. The purchase and dedication of the land and the selection of the Resource Manager and establishment of an endowment to ensure funding of annual ongoing basic stewardship costs shall be complete prior to the approval of the RMP.
 5. In lieu of providing a private habitat manager, the applicant may contract with a federal, state or local government agency with the primary mission of resource management to take fee title and manage the mitigation land). Evidence of satisfaction must include

a copy of the contract with the agency, and a written statement from the agency that (1) the land contains the specified acreage and the specified habitat, or like functioning habitat, and (2) the land will be managed by the agency for conservation of natural resources in perpetuity.

- c. **Option 3:** If habitat credit cannot be purchased in a mitigation bank, then the applicant can purchase land inholdings of **4.2 acres** of Sonoran creosote bush scrub or Sonoran mixed woody scrub habitat or like functioning habitat within the Anza Borrego State Park, or a parcel of like functioning habitat approved prior to purchase by the Director of Department of Planning and Land Use. If a inholding is purchased, the lands will either (1) Be transferred to a government agency charged with conservation of natural resources via fee title (with demonstration of long term management capabilities), or (2) Dedicated in a conservation open space easement to the County and the land will be managed through an approved Resource Management Plan to the satisfaction of the Director of Planning and Land Use.

Documentation: The applicant shall purchase the off-site mitigation credits and provide the evidence to the [DPLU, PCC] for review and approval. If the offsite mitigation is proposed to be owned or managed by DPR, the applicant must provide evidence to the [DPLU PCC] that [DPR, GPM] agrees to this proposal. It is recommended that the applicant submit the mitigation proposal to the [DPLU, PCC], for a pre-approval. If an RMP is going to be submitted in-lieu of purchasing credits, then the RMP shall be prepared and an application for the RMP shall be submitted to the [DPLU, ZONING]. **Timing:** Prior to the approval of any grading or improvement plan or issuance of any grading or improvement permit, and prior to use of the premises in reliance of this permit, the mitigation shall occur. **Monitoring:** The [DPLU, PCC] shall review the mitigation purchase for compliance with this condition. Upon request from the applicant [DPLU, PCC] a pre-approve the location and type of mitigation only. The credits shall be purchased before the requirement can be completed. If the applicant chooses option #2, then the [DPLU, ZONING] shall accept an application for an RMP, and [DPLU, REG] [DPR, GPM] shall review the RMP submittal for compliance with this condition and the RMP Guidelines.

6. PLAN CONFORMANCE: [DPW, ESU] [GP, IP,] [MITIGATION]

Intent: In order to implement the required mitigation measures for the project, the required grading plans shall conform to the approved Conceptual Grading and Development Plan pursuant to [Section 87.207 of the County Grading Ordinance](#). **Description of requirement:** The grading plans shall conform to the approved Conceptual Grading and Development Plan, which includes all of the following mitigation measures: air quality and resource avoidance. All conditions, requirements, mitigation measure and information stated on the sheets of the plans shall be made conditions of the permit's issuance and shall be implemented pursuant to the adopted mitigation Monitoring and Reporting Program (MMRP) of this Permit. No deviation of the requirements can be made

with out modification of this permit. **Documentation:** The applicant shall submit the grading plans and improvement plans, which conform to the conceptual development plan for the project. **Timing:** Prior to approval of any grading or improvement plan and prior to issuance of any grading or construction permit, the notes and items shall be placed on the plans as required. **Monitoring:** The [DPW, Environmental Services Unit Division, DPR, TC, or DPLU, Building Division for Minor Grading] shall verify that the grading and or improvement plan requirements have been implemented on the final grading and or improvement plans as applicable. The environmental mitigation notes shall be made conditions of the issuance of said grading or construction permit.

BUILDING PERMIT: *(Prior to approval of any building plan and the issuance of any building permit).*

7. GEOTECHNICAL STUDIES: [DPLU, BD] [BP, UO] [MITIGATION]

Intent: In order to identify that the project site is subject to Liquefaction as evaluated by the [County of San Diego Guidelines for Determining Significance](#), Geotechnical Report shall be prepared. **Description of Requirement:** A Geotechnical Study shall be prepared by a Registered Civil or Geotechnical Engineer, and submitted for approval by the by the [DPLU, Building Division]. The report shall specify foundation designs, which are adequate to preclude substantial damage to the proposed structure due to liquefaction. **Documentation:** The applicant shall prepare the report and submit it along with the submittal for the building plans. All recommendations of the report shall be incorporated into the design of the building. **Timing:** Prior to the approval of any building plan and the issuance of any building permit for any structure, the Geotechnical study shall be approved. **Monitoring:** The [DPLU, BD] shall review the Geotechnical Study for compliance with all applicable building codes, engineering standards, and this condition. If there are any recommendations to minimize effects of liquefaction, the [DPLU, BD] shall ensure that, they are incorporated into the project design.

OCCUPANCY: *(Prior to any occupancy, final grading release, or use of the premises in reliance of this permit).*

8. AIR QUALITY & DUST CONTROL: [DPLU, BI] [UO] [MITIGATION]

Intent: In order to mitigate for fugitive dust caused from the permanent disturbance of the site from clearing and grading, a permeable soil-binding or permeable rock material shall be used to limit the dust. **Description of Requirement:** A non-toxic, biodegradable permeable soil-binding agent or permeable rock material will be applied to all disturbed or exposed surface areas as follows:

- a. A permeable soil-binding agent suitable for both traffic and non-traffic areas shall be used. These agent shall be are biodegradable, eco-safe, with liquid copolymers that stabilize and solidify soils or aggregates, which and facilitate dust suppression.

- b. Alternatively, a permeable rock material consisting of either river stone decomposed granite or gravel could be placed in a thin cover over all exposed surface area in-lieu of the binding agent referenced above.
- c. In-lieu of, or in combination with letters A and B above, the areas located between the arrays, and any non-drivable surface may be revegetated with native noninvasive plant species. A Revegetation Plan, shall be prepared, that which provides sufficient ground cover to mitigate fugitive dust from the ground disturbances. The revegetation plan shall conform to the most current version of the [County of San Diego Report Format and Content Requirements for Revegetation Plans](#). The Revegetation Plan shall include the following:
 - 1. The monitoring plan shall be for a length of 3 years and have an 80 percent success criterion.
 - 2. The report shall be prepared by a County approved biologist and the construction plans shall be prepared by a State of California Licensed Landscape Architect.
 - 3. Revegetation objectives, revegetation site biological resource map, 24"x 36" landscape plan, map showing revegetation areas according to mitigation type and amount, site preparation information, type of planting materials (e.g. species ratios, source, size material, etc.), planting program, 80 percent success criteria, and a detailed cost estimate.
 - 4. A cost estimate based on a 3% annual inflation rate shall be submitted and approved, which includes the cost of the plant stock and its installation, irrigation system and installation, cost of monitoring and maintenance of the revegetation area for the required monitoring period, and report preparation and staff time to review.
 - 5. The applicant shall enter into a Secured Agreement with the County of San Diego to the satisfaction of the [DPLU, LA] as follows: The security shall consist of a letter of credit, bond, or cash for 100 percent of the estimated costs associated with the implementation of the Revegetation Plan and, Provide a 10 percent cash deposit of the cost of all improvements, but no less than \$3,000 and no more than \$30,000.

Documentation: The applicant shall install the permeable binding agent or permeable rock as referenced above. Upon completion a photographic letter report with manufacture data sheets and specifications of the material shall submitted to the [DPLU, PCC] for review and approval. (For Option c only): The

applicant shall prepare the Revegetation Plan pursuant to this condition and by using the, [Applicants Guide to Preparing Revegetation Plans, DPLU Form # 717](#) then submit it to the [DPLU, ZONING] and pay all the applicable review fees and deposits. **Timing:** Prior to occupancy of the first structure built in association with this permit and every other structure there after, compliance with this condition is required. **Monitoring:** The [DPLU, PCC] shall review the letter report for compliance with this condition, and instruct the [DPLU, BI] to perform a field verification. (For Option c only): The [DPLU, LA] shall review the Revegetation Plan for conformance with this condition and the [Report Format and Content Requirements for Revegetation Plans](#). Upon approval of the Plan, a Secured Agreement for the implementation of the Plan shall be executed.

ONGOING: *(Upon establishment of use The following conditions shall apply during the term of this permit).*

9. AIR QUALITY & DUST CONTROL: [DPLU, PCO] [OG] [MITIGATION]

Intent: In order to mitigate for fugitive dust caused from the permanent disturbance of the site from clearing and grading, a permeable soil-binding agent, permeable rock material, or revegetation in combination with both, shall be used to limit the dust. **Description of Requirement:** A non-toxic, biodegradable permeable soil-binding agent, revegetation of native plant species, or permeable rock material shall be maintained on all disturbed or exposed surface areas as follows:

- a. A permeable soil-binding agent suitable for both traffic and non-traffic areas shall be used. These agent shall be are biodegradable, eco-safe, with liquid copolymers that stabilize and solidify soils or aggregates, which and facilitate dust suppression.
- b. Alternatively, a permeable rock material consisting of either river stone decomposed granite or gravel could be placed in a thin cover over all exposed surface area in-lieu of the binding agent referenced above.
- c. In-lieu of, or in combination with #1 and #2 above, the areas located between the arrays, and any non-drivable surface may be revegetated with native noninvasive plant species. The areas shall be maintained and shall limit any nonnative invasive plant species. The site shall be vegetated as shown in the approved revegetation plan that is on file with this permit.

Documentation: The permittee and property owner shall maintain the permeable binding agent, revegetation, or permeable rock as referenced above.

Timing: Upon establishment of the use, this condition shall apply for the duration of the term of this permit. **Monitoring:** The [DPLU, Code Enforcement Division] is responsible for enforcement of this permit.

10. GROUNDWATER USAGE: [DPLU, CODES] [OG] [MITIGATION].

Intent: In order to mitigate **3.4 acre feet** of annual direct impacts to groundwater and protect long term groundwater resources in the Borrego Valley aquifer, as evaluated in the [County Groundwater Resource Guidelines for Determining Significance](#) and to comply with the [DPLU Policy Regarding CEQA Cumulative Impact Analyses for Borrego Valley Groundwater Use](#), a groundwater usage limitation is set for the project. **Description of Requirement:** The project shall not use more than **3.4-acre feet** of on-site groundwater water annually from on-site wells. Imported water is not permitted. The water is only to be used for construction, decommissioning, and panel washing. The only exception to this limit is the first year of construction, which shall not exceed **119.6-acre feet**. **Documentation:** The applicant shall comply with the maximum water usage allotment. The applicant shall maintain monthly log to provide evidence of water usage upon request by the County. **Timing:** Upon establishment of the use, this condition shall apply for the duration of the term of this permit. **Monitoring:** The *[DPLU, Code Enforcement Division]* is responsible for enforcement of this permit.

III. The Following are Required Mitigation Measures That shall be implemented on the grading and or improvement plans for MUP 10-026: The following Grading Plan mitigation and condition notes have been placed the Preliminary Grading Plan, will be placed on any final grading plan, and made conditions of the issuance of said permits:

PRE-CONSTRUCTION MEETING : *(Prior to preconstruction conference and prior to any clearing, grubbing, trenching, grading, or any land disturbances).*

1. “RESOURCE AVOIDANCE: [DPLU, PCC] [DPW, PDCI] [MITIGATION].

Intent: In order to avoid impacts to breeding avian species, which is a sensitive biological resource pursuant to CEQA, a Resource Avoidance Area (RAA), shall be implemented on all plans. **Description of Requirement:** There shall be no brushing, clearing and/or grading on any portion of the project parcels within 300 feet of active nests during the breeding season of the loggerhead shrike. The breeding season is defined as occurring between March 1 and August 31. The Director of Planning and Land Use [DPLU, PCC] may waive this condition, provided that no loggerhead shrike nests are present in the vicinity of the brushing, clearing or grading. **Documentation:** The applicant shall provide a letter of agreement with this condition; alternatively, the applicant may submit a written request for waiver of this condition. No Grading shall occur within the RAA until concurrence of the waiver is received from the County and California Department of Fish and Game. **Timing:** Prior to preconstruction conference and prior to any clearing, grubbing, trenching, grading, or any land disturbances and throughout the duration of the grading and construction, compliance with this condition is mandatory. **Monitoring:** The *[DPW, PDCI]* shall not allow any grading in the RAA during the specified dates, unless the conditions have been met.

DURING CONSTRUCTION: *(The following actions shall occur throughout the duration of the grading construction).*

2. AIR QUALITY: [DPW, PDCI] [MITIGATION].

Intent: In order to comply with Mitigation Monitoring and Reporting Program pursuant to NRG Solar MUP 10-026 to mitigate for fugitive dust caused by construction activities the following dust control measures shall be implemented.

Description of Requirement: The project shall comply with the following Air Quality measures:

- a. All haul/dump trucks entering or leaving the site with soil or fill material must maintain at least 2 feet of freeboard or cover loads of all haul/dump trucks securely (unnumbered design measure).
- b. Dust control measures of the Grading Ordinance will be enhanced with a minimum of three (3) daily applications of water to the construction areas, between dozer/scrapper passes and on any unpaved roads within the project limits.
- c. Grading is to be terminated in winds exceed 25 mph.
- d. Sweepers and water trucks shall be used to control dust and debris at public street access points.
- e. Dirt storage piles will be stabilized by chemical binders, tarps, fencing or other suppression measures.
- f. Internal construction-roadways will be stabilized by paving, chip sealing or chemicals after rough grading.
- g. A minimum of 10 - 15 mph signs shall be posted and enforced on unpaved areas during construction.

Documentation: The applicant shall comply with the Air Quality requirements of this condition. **Timing:** The following actions shall occur throughout the duration of the grading construction. **Monitoring:** The [DPW, PDCI] shall make sure that the grading contractor complies with the Air Quality requirements of this condition. The [DPW, PDCI] shall contact the [DPLU, PCC] if the applicant fails to comply with this condition.

3. PALEONTOLOGICAL MONITORING: [DPW, PDCI] [DPLU, PCC] [PC] [DPLU, FEE X2] Intent: In order to comply with Mitigation Monitoring and Reporting Program in accordance with MUP 10-026, a Paleontological Resource Grading Monitoring Program shall be implemented. **Description of Requirement:** This project site is has marginal to low levels of sensitive Paleontological resources. All grading activities are subject to the [County of San Diego Grading Ordinance Section 87.430](#), if any significant resources (Fossils) are encountered during grading activities.

- a. The grading contractor is responsible to monitor for paleontological resources during all grading activities. If any fossils are found greater than 12 inches in any dimension, stop all grading activities and contact the [DPLU, PCC] before continuing grading operations.
- b. If **any** paleontological resources are discovered and salvaged, the monitoring, recovery, and subsequent work determined necessary shall be completed by or under the supervision of a Qualified Paleontologist pursuant to the [San Diego County Guidelines for Determining Significance for Paleontological Resources](#).

Timing: The following actions shall occur throughout the duration of the grading construction. **Monitoring:** The [DPW, PDCI] shall make sure that the grading contractor is on-site performing the Monitoring duties of this condition. The [DPW, PDCI] shall contact the [DPLU, PCC] if the grading contractor or applicant fails to comply with this condition.

ROUGH GRADING: *(Prior to rough grading approval and issuance of any building permit).*

4. **PALEONTOLOGICAL MONITORING: [DPLU, PCC] [RG, BP] [DPLU, FEE].**
Intent: In order to comply with the adopted Mitigation Monitoring and Reporting Program (MMRP) in accordance with MUP 10-026, and the [County of San Diego Guidelines for Determining Significance and Report Format and Content Requirements for Paleontological Resources](#), a Grading Monitoring Program shall be implemented. **Description of Requirement:** One of the following letters shall be performed upon completion of the grading activities that require monitoring:

- a. If **no** paleontological resources were discovered, submit a "No Fossils Found" letter from the grading contractor to the [DPLU, PCC] stating that the monitoring has been completed and that no fossils were discovered, and including the names and signatures from the fossil monitors. The letter shall be in the format of Attachment E of the [County of San Diego Guidelines for Determining Significance for Paleontological Resources](#).
- b. If Paleontological **resources were encountered** during grading, a letter shall be prepared stating that the field grading monitoring activities have been completed, and that resources have been encountered. The letter shall detail the anticipated time schedule for completion of the curation phase of the monitoring.

Documentation: The applicant shall submit the letter report to the [DPLU, PCC] for review and approval. **Timing:** Upon completion of all grading activities, and prior to Rough Grading final Inspection ([Grading Ordinance SEC 87.421.a.2](#)), the letter report shall be completed. **Monitoring:** The [DPLU, PCC] shall review the final negative letter report or field monitoring memo for compliance with the project MMRP, and inform [DPW, PDCI] that the requirement is completed.

END MITIGATION FOR 3300-10-026 (MUP)

IV. The Following Required Mitigation are subject to the off-site improvements at the Borrego Valley Substation. The CPUC is responsible for enforcement of these mitigation measures: Refer to the attached Environmental Initial Study for the rationale for requiring the following measures:

1. ARCHAEOLOGICAL GRADING MONITORING:

Intent: In order to mitigate for potential impacts to undiscovered buried archaeological resources on the project site, a grading monitoring program and potential data recovery program shall be implemented pursuant to the [California Environmental Quality Act \(CEQA\) Sections 15064.5 and 15064.7](#). **Description**

of Requirement: A Principal Investigator (PI) known as the "Project Archaeologist," shall be contracted to perform cultural resource grading monitoring and a potential data recovery program during all grading, clearing, grubbing, trenching, and construction activities to ensure protection of buried cultural resources. The monitoring shall take place on all undisturbed lands and any initial cutting of the entire site. The following shall be completed:

- a. The Project Archaeologist shall perform the monitoring duties before, during and after construction.
- b. The Project Archeologist shall provide evidence that a Native American of the appropriate tribal affiliation has also been contracted to perform Native American Grading Monitoring for the project.

Documentation: The applicant shall provide a copy of the Grading Monitoring Contract to the Director of the CPUC. **Timing:** Prior to any land disturbances or approval of any grading for the substation. **Monitoring:** The Director of the CPUC shall review the contract.

2. TEMPORARY FENCING:

Intent: In order to prevent inadvertent disturbance to loci 1a and 1b of CA-SDI-2366 located in close proximity to the SDG&E expansion area project, temporary construction fencing shall be installed. **Description of Requirement:** Prior to the commencement of any grading and or clearing in association with this grading plan, temporary orange construction fencing shall be placed to protect from inadvertent disturbance of the loci.

1. Temporary fencing is also required in all locations of the project where proposed grading or clearing is within 100 feet of the loci.
2. The placement of such fencing shall be approved by the DPLU, Permit Compliance Section. Upon approval, the fencing shall remain in place

until the conclusion of grading activities after which the fencing shall be removed.

Documentation: The applicant shall have a California licensed surveyor install and certify the installation of the temporary fencing. The applicant shall submit photos of the fencing along with the certification letter to the [DPLU, PCC] for approval. **Timing:** Prior to Preconstruction Conference, and prior to any clearing, grubbing, trenching, grading, or any land disturbances the fencing shall be installed, and shall remain for the duration of the grading and clearing. **Monitoring:** The [DPLU, PCC] shall either attend the preconstruction conference and approve the installation of the temporary fencing, or review the certification and pictures provided by the applicant's surveyor.

3. DESERT SALTBRUSH SCRUB MITIGATION:

Intent: In order to mitigate (2:1) for the impacts to **1.9 acres** of Desert saltbush scrub, which is a sensitive biological resource in accordance with CEQA, off-site habitat compensation shall occur in the amount of **3.8 acres**. This mitigation is for the improvements at the SDG&E Borrego Valley Substation, which is under the authority of the California Public Utilities Commission (CPUC). **Description of Requirement:** Purchase habitat credit, or provide for the conservation of **3.8 acres** of Desert saltbush scrub, located in the Borrego Valley Eco-Region, or other like functioning location to the satisfaction of the Director of the California Public Utilities Commission (CPUC). **Documentation:** The applicant shall purchase, or provide for the conservation of the mitigation to the satisfaction of the Director of the CPUC. **Timing:** Prior to approval of any grading or any land disturbance of the substation property, the mitigation shall occur. **Monitoring:** The Director of CPUC shall review the mitigation purchase for compliance with this mitigation measure.

4. AIR QUALITY & DUST CONTROL:

Intent: In order to mitigate for fugitive dust caused from the permanent disturbance of the site from clearing and grading, a permeable soil-binding or permeable rock material shall be used to limit the dust. **Description of Requirement:** A non-toxic, biodegradable permeable soil-binding agent or permeable rock material will be applied to all disturbed or exposed surface areas as follows:

- a. A permeable soil-binding agent suitable for both traffic and non-traffic areas shall be used. These agent shall be are biodegradable, eco-safe, with liquid copolymers that stabilize and solidify soils or aggregates, which and facilitate dust suppression.
- b. Alternatively, a permeable rock material consisting of either river stone decomposed granite or gravel could be placed in a thin cover over all exposed surface area in-lieu of the binding agent referenced above.

- c. In-lieu of, or in combination with #1 and #2 above, the areas located between the arrays, and any non-drivable surface may be revegetated with native noninvasive plant species. A Revegetation Plan, shall be prepared, that which provides sufficient ground cover to mitigate fugitive dust from the ground disturbances. The revegetation plan shall conform to the most current version of the [County of San Diego Report Format and Content Requirements for Revegetation Plans](#). The Revegetation Plan shall include the following:
1. The monitoring plan shall be for a length of 3 years and have an 80 percent success criterion.
 2. The report shall be prepared by a County approved biologist and the construction plans shall be prepared by a State of California Licensed Landscape Architect.
 3. Revegetation objectives, revegetation site biological resource map, 24"x 36" landscape plan, map showing revegetation areas according to mitigation type and amount, site preparation information, type of planting materials (e.g. species ratios, source, size material, etc.), planting program, 80 percent success criteria, and a detailed cost estimate.
 4. A cost estimate based on a 3% annual inflation rate shall be submitted and approved, which includes the cost of the plant stock and its installation, irrigation system and installation, cost of monitoring and maintenance of the revegetation area for the required monitoring period, and report preparation and staff time to review.
 5. The applicant shall enter into a Secured Agreement with the Director of the California Public Utilities Commission (CPUC) to ensure establishment and implementation of the revegetated areas.

Documentation: The applicant shall install the permeable binding agent or permeable rock as referenced above. Upon completion a photographic letter report with manufacture data sheets and specifications of the material shall be submitted to the CPUC for review and approval. (For Option c only): The applicant shall prepare the Revegetation Plan pursuant to this condition and by using the, [Applicants Guide to Preparing Revegetation Plans, DPLU Form # 717](#) then submit it to the CPUC and pay all the applicable review fees and deposits.

Timing: Prior to occupancy of the first structure built in association with this permit compliance with this condition is required. **Monitoring:** The CPUC shall review the letter report for compliance with this condition, and perform field verification. (For Option c only): The CPUC shall review the Revegetation Plan

for conformance with this condition. Upon approval of the Plan, a Secured Agreement for the implementation of the Plan shall be executed.

5. CULTURAL RESOURCES REPORT:

Intent: In order to ensure that the Grading Monitoring occurred during the grading phase of the project a final report shall be prepared. **Description of Requirement:** A final Grading Monitoring and Data Recovery Report that documents the results, analysis, and conclusions of all phases of the Archaeological Monitoring Program shall be prepared. The report shall include the following items:

- a. Department of Parks and Recreation, Archaeological Site forms.
- b. Daily Monitoring Logs
- c. Evidence that all cultural resources collected during the grading monitoring program has been curated at a San Diego facility that meets federal standards per 36 CFR Part 79, and therefore would be professionally curated and made available to other archaeologists/researchers for further study. The collections and associated records, including title, shall be transferred to an appropriate curation facility in San Diego County, to be accompanied by payment of the fees necessary for permanent curation. Evidence shall be in the form of a letter from the curation facility identifying that archaeological materials have been received and that all fees have been paid.
- d. If no cultural resources are discovered, a Negative Monitoring Report must be submitted stating that the grading monitoring activities have been completed. Daily Monitoring Logs must be submitted with the negative monitoring report.

Documentation: The applicant's archaeologist shall prepare the final report.

Timing: Prior to any occupancy, final grading release, or use of the premises in reliance of this permit, the final report shall be prepared. **Monitoring:** The Director of CPUC shall review the monitoring program for compliance with this mitigation measure.

6. RESOURCE AVOIDANCE:

Intent: In order to avoid impacts to breeding avian species, which is a sensitive biological resource pursuant to CEQA, a Resource Avoidance Area (RAA), shall be implemented on all plans. **Description of Requirement:** There shall be no brushing, clearing and/or grading on any portion of the project parcels within 300 feet of active nests during the breeding season of the loggerhead shrike. The breeding season is defined as occurring between March 1 and August 31. The California Department of Fish and Game may waive this condition, provided that no loggerhead shrike nests are present in the vicinity of the brushing, clearing or grading. **Documentation:** SDG&E shall provide a letter of agreement with this

condition; alternatively, the applicant may submit a written request for waiver of this condition. No Grading shall occur within the RAA until concurrence of the waiver is received from the California Department of Fish and Game. **Timing:** Prior to preconstruction conference and prior to any clearing, grubbing, trenching, grading, or any land disturbances and throughout the duration of the grading and construction, compliance with this condition is mandatory. **Monitoring:** The Director of the CPUC shall not allow any grading in the RAA during the specified dates, unless the conditions stated herein have been met.

7. AIR QUALITY ON-SITE LAND DISTURBANCES:

Intent: In order to comply mitigate for fugitive dust caused by construction activities the following dust control measures shall be implemented. **Description of Requirement:** The project shall comply with the following Air Quality measures:

- a. All haul/dump trucks entering or leaving the site with soil or fill material must maintain at least 2 feet of freeboard or cover loads of all haul/dump trucks securely (unnumbered design measure).
- b. Dust control measures of the Grading Ordinance will be enhanced with a minimum of three (3) daily applications of water to the construction areas, between dozer/scrapper passes and on any unpaved roads within the project limits.
- c. Grading is to be terminated in winds exceed 25 mph.
- d. Sweepers and water trucks shall be used to control dust and debris at public street access points.
- e. Dirt storage piles will be stabilized by chemical binders, tarps, fencing or other suppression measures.
- f. Internal construction-roadways will be stabilized by paving, chip sealing or chemicals after rough grading.
- g. A minimum of 10 - 15 mph signs shall be posted and enforced on unpaved areas during construction.

Documentation: The applicant shall comply with the Air Quality requirements of this condition. **Timing:** The following actions shall occur throughout the duration of the grading construction. **Monitoring:** The Director of CPUC shall make sure that the grading contractor complies with the Air Quality requirements of this condition.

8. PALEONTOLOGICAL MONITORING:

Intent: In order to comply with Mitigation Monitoring and Reporting Program for NRG Solar MUP 10-026, a Paleontological Resource Grading Monitoring Program shall be implemented. **Description of Requirement:** This project site

is has marginal to low levels of sensitive Paleontological resources. All grading activities are subject to the [County of San Diego Grading Ordinance Section 87.430](#), if any significant resources (Fossils) are encountered during grading activities.

- a. The grading contractor is responsible to monitor for paleontological resources during all grading activities. If any fossils are found greater than 12 inches in any dimension, stop all grading activities and contact the grading superintendant.
- b. If **any** paleontological resources are discovered and salvaged, the monitoring, recovery, and subsequent work determined necessary shall be completed by or under the supervision of a Qualified Paleontologist.

Timing: The following actions shall occur throughout the duration of the grading construction. **Monitoring:** The Director of the CPUC shall make sure that the grading contractor is on-site performing the Monitoring duties of this condition.

END SUBSTATION (CPUC) SPECIFIC MITIGATION MEASURES:

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VI. Critical Project Design Elements That Must Become Conditions of Approval for MUP 10-026: The following project design elements were either proposed in the project application or the result of compliance with specific environmental laws and regulations and were essential in reaching the conclusions within the attached Environmental Initial Study. While the following are not technically mitigation measures, their implementation must be assured for both Major Use Permits to avoid potentially significant environmental effects.

1. FLOODPLAIN COMPLIANCE [DPW, LDR] [BP, UO]

Intent: In order to provide protection from flood damage for the structure from flows coming from the Coyote Creek Alluvial Fan and to comply with the [County Flood Damage Prevention Ordinance \(Title 8, Division 11 Sec 501 \(c\)\(2\)\)](#), [County Watershed Protection Ordinance \(WPO\) No.9926, County Code Section 67.801 et. seq.](#), all structures on-site shall be elevated one foot above the Federal Emergency Management Agency (FEMA) base flood depth and/or complies with [Guideline letter dated April 28, 2011](#). **Description of requirement:**

- a. The building plans shall indicate that the inverter room structures, substation components, substation buildings, and maintenance sheds shall been constructed on stilts as indicated on the approved plot plan. The structure's lowest horizontal structural member shall be elevated at least one-foot above the base flood depth to ensure that there will be no changes to the base flood depths or floodplain boundary.

Or

- b. The placement of inverters and transformers units at grade or the use of fill, to elevate the inverter and transformer units. The placement and distribution of the inverter and transformer units shall be one (1) unit per five (5) acres and located a sufficient distance from the project property lines. The maximum width, perpendicular to the flow of each unit, or of the top of fill (if fill issued) shall be 4 feet. The length dimension shall be to the satisfaction of the Director of Public Works and shall be parallel to flow of water.

Documentation: The applicant shall indicate on the building plans that the requirements of either a or b above have been met. **Timing:** Prior to approval of any building plan and the issuance of any building permit associated with the structures referenced above, compliance with this condition is required. **Monitoring:** The [DPLU, BPPR] shall review the building plans for consistency with this condition in coordination with DPW Flood Control Engineering.

2. ANTI-REFLECTIVE SURFACES: [DPLU, BPPR] [BP, UO]

Intent: In order to reduce glare that may affect the Borrego Valley Airport and surrounding community, the solar panels shall be designed with anti-reflective surface. **Description of requirement:** Any structure that is built shall have nonreflective surfaces and antiglare coatings to any reflective surfaces that may interfere with aeronautical operations of the Borrego Valley Airport, unless waived specifically by the Director of Public Works, Airport Division and the Director of DPLU. **Documentation:** The applicant shall provide notes and documentation on the building plans to demonstrate that the solar panels any other reflective surface will be treated with an anti-reflective coating, which would reduce glare. The applicant shall provide the evidence to *[DPLU, Building Division]* for review and approval. **Timing:** Prior to approval of any building plan and the issuance of any building permit, or use of the premises in reliance of this permit, this requirement shall be met. **Monitoring:** The *[DPLU, Building Div.]* shall review the plans in accordance with this condition.

3. ELEVATION CERTIFICATION: [DPW, LDR] [BP, UO]

Intent: In order to provide the required drainage improvements for the project and to comply with the [County Flood Damage Prevention Ordinance \(Title 8, Division 11, Chapter 5\)](#) and [Borrego Valley Flood Management Report prepared by Boyle Engineering, October 1989](#), the elevation certification shall be completed. **Description of requirement:** Construction in alluvial fans. New construction, substantial improvement and placement of any structure in Zone AO or within the alluvial fan boundaries shown on the Borrego Valley alluvial fans map or FIRM, shall have the lowest floor, including basement, mechanical and utility equipment, and ductwork, but excluding garages used solely for parking or storing vehicles, access to or from the structure or storage in a manner that prevents stored objects from being carried away in a flood, elevated at least 1 foot above the base flood depth. The elevation shall be certified by a registered civil engineer or licensed land surveyor. Such certification and

verification shall be provided to the Flood Plain Administrator. This condition only *applies if the project proposed structures (inverter room structures, substation components, substation buildings, and maintenance sheds) on stilts and are elevated one foot above the floodway elevation.* **Documentation:** The applicant shall indicate on the building plans that the building pad and any proposed structure complies with this condition. Complete the FEMA Form 81-31 located at <http://www.fema.gov/pdf/nfip/elvcert.pdf> and submit them to [DPW, LDR], for review and approval. **Timing:** Prior to issuance of any building permit, and prior to use of the premises in reliance of this permit the plans the certification shall be made. **Monitoring:** The [DPW, LDR] shall review the certification and plans for compliance with this condition.

4. FIRE PROTECTION: [DPLU, PCC] [UO] [DPLU, FEE X2]

Intent: In order to assure fire safety in compliance with the [County of San Diego Fire Code Sections 96.1.4703 and 96.1.4707](#), the site shall be maintained in conformance with the approved Fire Protection Letter Report and Condition letter from the Borrego Fire Protection District. **Description of requirement:** The following measures approved in the Fire Letter Report and Condition Letter dated September 20, 2010, shall be implemented and maintained:

- a. **Access:** The driveway (fire apparatus access road) leading from Palm Canyon Drive to the main project site entrance shall have an unobstructed improved width of the existing 12'-16 feet as long as it is constructed with decomposed granite (DG). Fire apparatus access roads shall be designed and maintained to support the imposed load of fire apparatus not less than 75,000 lbs. and shall be provided with an approved surface so as to provide all weather driving capabilities.
- b. **Water Tank:** The fire authority has accepted an onsite Water Tank in-lieu of a fire hydrant. Install a 5,000 gallon water tank in accordance with County Fire Code Section 96.1. 508.2.2.
- c. **Gates:** Any gates, new or existing, must meet County Fire Code Section 96.1.503.6 for automatic operation with battery backup. Gates must open immediately upon emergency vehicle strobe light activation from either direction of approach. Gates must open for vehicles moving in the direction of egress (leaving the property) when the vehicle approaches it. Gates must open on AC power failure. Gate installation must include Knox key-operated switch.
- d. **CFD:** Participate in the formation of the Community Facilities District (CFD) to the satisfaction of the Borrego Springs Fire Protection District. If the CFD is formed then execute all applicable documents to join the existing CFD. If the CFD is not formed, then the applicant shall form a petition in accordance with State Law to form the CFD and participate.

Documentation: The applicant shall provide documentation (inspection report or photographs) that demonstrates compliance with the FPP, and a letter that the Borrego Springs Fire Protection District has approved the driveway access, fire water tank, and gates. **Timing:** Prior to occupancy of the first structure built in association with this permit, the improvements shall be implemented. **Monitoring:** The [DPLU, PCC] shall verify that the mitigation measures have been initially implemented pursuant to the approved building plans and the fire protection plan.

ADOPTION STATEMENT: This Mitigated Negative Declaration was adopted and above California Environmental Quality Act findings made by the Planning Commission on (TO BE DETERMINED).